

FOC MAIL SECTION

Federal Communications Commission

DA 98-2120

OCT 27 10:39 AM '98

Before the  
 Federal Communications Commission  
 Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	MM Docket No. 98-191
Table of Allotments,	)	RM-9351
FM Broadcast Stations.	)	
(Leesville, Louisiana)	)	

## NOTICE OF PROPOSED RULE MAKING

Adopted: October 14, 1998

Released: October 23, 1998

Comment Date: December 14, 1998

Reply Comment Date: December 29, 1998

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed on behalf of Pene Broadcasting Company, Inc. ("petitioner"), licensee of Station KJAE(FM), Channel 224A, Leesville, Louisiana, requesting the substitution of Channel 228C3 for Channel 224A at Leesville, and modification of the license for Station KJAE(FM) accordingly. Petitioner states that it will apply for Channel 228C3 if it is allotted to Leesville, as requested.

2. In support of the proposal, petitioner advises that it desires to provide an enhanced service to Leesville and its environs. However, Station KJAE(FM) is currently precluded from operating with improved facilities on Channel 224 due to minimum distance separation constraints.<sup>1</sup>

3. A staff engineering review of the instant proposal reveals that the requested allotment of Channel 228C3 at Leesville (pop. 7,638)<sup>2</sup> located in Vernon Parish (pop. 18,331), would enable Station KJAE(FM) to provide an expanded service to 52,903 persons and an area of approximately 1,838 square kilometers. Additionally, our engineering review confirms that Channel 228C3 can be allotted to Leesville consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules at the petitioner's requested site

<sup>1</sup>Petitioner's engineering statement advises that Channel 224A was allotted to Leesville under the former § 73.207(b) spacing requirements at which time Class A facilities were limited to 3.0 kilowatts. We note that pursuant to the present requirements of § 73.207(b), petitioner's authorized site impacts upon Station KROK(FM), DeRidder, Louisiana, as well as Station KJVC(FM), Mansfield, Louisiana. Therefore, the petitioner is precluded from attaining an improved service on Channel 224 at Leesville.

<sup>2</sup>Population figures recited herein were taken from the 1990 U.S. Census Reports.

located 5.9 kilometers (3.7 miles) north of the community at coordinates 31-11-29 NL and 93-14-35 WL.

4. Pursuant to the provisions of Section 1.420(g)(2) of the Commission's Rules, should another party express an interest in the Class C3 allotment at Leesville, the modification could not be implemented unless an additional equivalent class channel is also allotted. In this regard petitioner advises that Channel 252C3 may also be allotted to Leesville should other parties indicate an interest in applying for a Class C3 channel at that community.<sup>3</sup> Therefore, as the petitioner's modification proposal complies with the requirements of Section 1.420(g) of the Commission's Rules, and as the requested service improvement will enable Station KJAE(FM) to provide the community and surrounding areas with an improved coverage FM service, we shall propose to modify the petitioner's license for Station KJAE(FM), as requested, to specify operation on Channel 228C3 at Leesville, Louisiana.

5. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Leesville, Louisiana, as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Leesville, Louisiana	224A, 289C3	228C3, 289C3

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before December 14, 1998, and reply comments on or before December 29, 1998, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Denise B. Moline, Esq.  
100 Carpenter Drive, Suite 100  
P.O. Box 217  
Sterling, VA 20167

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<sup>3</sup>We have confirmed petitioner's engineering statement that Channel 252C3 may also be allotted to Leesville consistent with the requirements of Section 73.207(b) of the Commission's Rules, provided the transmitter site therefor is located at least 14.6 kilometers (9.1 miles) north of the community at coordinates 31-15-56 NL and 93-19-07 WL.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b) and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Attachment: Appendix

## APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239), at its headquarters, 1919 M Street, N.W., Washington, D.C.